... unites Ontario's municipalities

Report Series 1992

92-2

AMO's Response to *Open Local Government* (Draft Legislation Re: Conflict of Interest, Open Meetings and Disposal of Property)

Association of Municipalities of Ontario
March 1992

MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

In 1990, as a result of growing concerns over alleged conflicts of interest involving local government representatives, both electors and municipal politicians requested that the Act be reviewed. This led the Ministry of Municipal Affairs to produce its Discussion Paper on the Municipal Conflict of Interest Act. The purpose of this document was to provide a framework for dialogue on the subject by identifying some of the areas of concern and alternatives for addressing these concerns.

In August 1990, the former Government announced the establishment of the Municipal Conflict of Interest Review to examine areas of concern with the Municipal Conflict of Interest Act. A consultation committee was appointed to conduct the review and seek input on how to improve the existing conflict of interest rules. As a result of the Provincial election, the initiative was postponed until January 1991 at which time the Minister of Municipal Affairs announced the continuation of the review. The Committee was requested to make recommendations for appropriate legislative changes by July 31, 1991.

The Committee's report, Municipal Conflict of Interest Review, and the comments received from the consultations conducted across the province were used as a basis for the amendments proposed in the package of draft legislation, Open Local Government which was released on December 19, 1991. However, the scope of the initiative was broadened in this report in that it went beyond the issue of conflict of interest to include open meetings and disposal of property. Comments on the package will be received by the Ministry of Municipal Affairs until March 31, 1991.

The Association of Municipalities of Ontario (AMO) welcomes the opportunity to respond to the proposals set out in this government document, Open Local Government. The draft legislation presents some major improvements to the existing legislation, but also contains some serious problems requiring further consideration by the Province. The Association trusts that the Ministry of Municipal Affairs will further examine the package incorporating the changes suggested herein.

AMO's response has four sections. In the first section, AMO makes general comments about the draft legislation, Open Local Government. These comments suggest that the Ministry of Municipal Affairs rework certain wording and phraseology, provide clear and concise definitions, release the regulations concurrently with the legislation, consider the effective date of the legislation, and provide a full 90 day consultation period to all municipalities.

In the second, third and fourth sections, the Association responds to the specifics of the package dealing with conflict of interest, open meetings and disposal of property respectively. This analysis includes structural comments as well as comments pertaining to the specifics of the draft legislation.

In the conclusion, AMO extends its appreciation to the Province for providing the opportunity to comment on the package of draft legislation, Open Local Government. The Association trusts its recommendations will be carefully considered by the Province when preparing the final pieces of legislation.

1 BACKGROUND

Before 1972, municipal conflict of interest provisions were contained in the Ontario Municipal Act and various other statutes. The provisions in these statutes were based on the principle of disqualification if an individual had an interest in a contract with the municipality or local board. As a result of this, candidates were not able to run for office or would have to forfeit their seat if an interest was acquired after becoming elected or appointed.

In 1972, the Ontario Municipal Conflict of Interest Act came into force with the inclusion of the principles of disclosure and abstention. With this fundamental change to the legislation, a member of a council or local board was prohibited from dealing with those matters in which they had an interest rather than being all together disqualified.

From 1974 to 1976, a committee established by the Association of Municipalities of Ontario (AMO) reviewed the Ontario Municipal Conflict of Interest Act and called for a complete revision of the statute to overcome problems identified by the Association.

In 1978, a Provincial/Municipal Committee was established to review the Act and to make recommendations to the Province. The areas perceived to be problematic were:

- the lack of clarity as to when a conflict actually existed;
- the lack of clarity as to the procedures for disclosure of an interest; and,
- difficulties encountered by a citizen attempting to bring an action under the Act.

In 1979, the Association established a special committee on the Municipal Conflict of Interest and Freedom of Information. The committee examined the entire subject of conflict of interest as it related to municipal elected and appointed officials. This included the analysis of thirty-one areas the Committee deemed to be a problem. Many of the recommendations AMO put forward were adopted by the Province in the Municipal Conflict of Interest Act, 1983.

In 1990, as a result of growing concerns over alleged conflicts of interest involving local government representatives, both electors and municipal politicians requested that the Act be reviewed. This led the Ministry of Municipal Affairs to produce its Discussion Paper on the Municipal Conflict of Interest Act. The purpose of this document was to provide a framework for dialogue on the subject by identifying some of the areas of concern and some of the alternatives for addressing these concerns.

In August 1990, the previous Government announced the establishment of the Municipal Conflict of Interest Review to examine areas of concern with the Municipal Conflict of Interest Act. A consultation committee of nine members was appointed to conduct the review and seek input on how to improve the existing conflict of interest rules. As a result of the Provincial election, the initiative was postponed until January 1991 at which time the Minister of Municipal Affairs announced the continuation of the review with the addition of two new members. The Committee was requested to make recommendations for appropriate legislative changes by July 31, 1991.

The Committee's report, Municipal Conflict of Interest Review, and the comments received from the consultations conducted across the province were used as a basis for the amendments proposed in the report, Open Local Government which was released on December 19, 1991. However, the scope of the initiative was broadened in this report in that it went beyond the issue of conflict of interest to include open meetings and disposal of property.

Obviously, AMO has considerable interest in the contents of these 3 pieces of legislation and appreciates the opportunity to comment on each. The following report summarizes some of the key issues and concerns of the Association pertaining to the proposed Open Local Government package of draft legislation. For easier reference, this report has been formatted to coincide with the structure of the Province's package.

2 INTRODUCTION

To be truly accountable, governments at all levels must be open to the people they serve. Historically, local government has been the most accessible and open level of government in Canada. The absence of a party system has enabled municipalities and local boards to transact the vast majority of their business in an open forum. It must also be noted that while public disclosure of a conflict of interest has been a requirement for municipal councillors since 1972, similar provisions have not yet been instituted at the provincial or federal levels.

Despite the level of openness that currently exists, AMO recognizes that the existing conflict of interest legislation is not perfect. The legislation's lack of clarity has led to numerous problems with regard to determining whether or not a real conflict of interest exists, and deciding whether a meeting may be justly closed to the public. AMO therefore welcomes the current review of this issue, and hopes that the result will be clearer, more workable legislation for all parties involved.

In commenting on the draft legislation, AMO bases its analysis on the following two principles:

1) The process of local government decision-making should be as open to the public as possible.

   Keeping in mind that there will always need to be trade-offs where openness is deemed to be detrimental to efficiency and effectiveness, unless such conflict is significant, the concept of openness should prevail.

2) The strength of local government is the knowledge and dedication of the people who serve.

   Unlike their counterparts at the federal and provincial levels, the vast majority of local council and board members are not politicians by trade. They are business people, workers, farmers, teachers, and many others, who give of their time and energy to help shape the communities in which they live. Their remuneration for this dedication is often minimal, barely covering the time and expense associated with the position. This part-time "volunteer" status must be reflected in the drafting of any conflict of interest legislation. While the disclosure of

conflict should be absolute, the disclosure of personal information which may or may not result in a potential conflict must be in keeping with the position held, or communities across Ontario will be deprived of this most valuable resource.

3 GENERAL COMMENTS

AMO has several general comments to make on the package of draft legislation, Open Local Government. These comments apply to the whole of the package and are mentioned throughout the report. In drafting these comments, the Association made a number of references to the Member's Conflict of Interest Act, 1988.

- Certain usage of words and phrases throughout the draft legislation lack clarity, definition and consistency. The legislation must be specific and concise if it is to be utilized effectively.

- The Province should release the regulations concurrently with the legislation and municipalities should be consulted when these regulations are released. Presently, it is difficult for municipalities to fully respond to the various issues found in the draft legislation without the information contained in the regulations.

- The Association would not object to a new Municipal Conflict of Interest Act being introduced as legislation this year; however, the Association does object to the timing requirements of the disclosure statements of assets and liabilities. The Minister has stated that once the legislation receives Royal Assent, it will become law. The Association has problems with this course of action and believes the disclosure requirement should take affect as of the next municipal election. Current members of municipal councils and local boards were elected under the existing legislation and it is unfair to introduce these requirements after these individuals had decided to pursue a position on municipal councils or local boards.

RECOMMENDATION 1

That mandatory disclosure of assets not be required in mid-term, but made effective at the date of registration for the November 1994 municipal election.

- The Association also believes the disclosure requirement should be extended beyond the incumbent to include new candidates involved in municipal elections. As the draft legislation reads, the disclosure statements would be filed for those candidates who already hold office, but no mention has been made of new candidates. The Association believes that all candidates should be required to file disclosure statements at the time of registration. This would allow all candidates to be judged on an equal footing.

RECOMMENDATION 2

Extend the disclosure of assets and liabilities to include all candidates seeking office.

- AMO is concerned with the Ministry's delay in releasing the document, Open Local Government. Although the draft legislation was released on December 19, 1991, municipalities across the province did not receive it until the first or second week of February 1992. With this delay in transmission, municipalities were faced with a shorter consultation period than anticipated. Due to the problems this presented to municipalities on an issue of utmost concern, AMO urges the Province to permit a full 90 day consultation period as initially intended.

RECOMMENDATION 3

That the Province extend the deadline of the consultation period by one month.

4 MUNICIPAL CONFLICT OF INTEREST DRAFT LEGISLATION

Section 1
Purposes of the Act

In the Municipal Conflict of Interest Act, 1983, there was no statement of purpose explaining the intentions and principles of the Act. The draft legislation includes both a statement of purpose and a definition of what is meant to be a "conflict of interest".

AMO supports this additional section to the Act since it allows for the elimination of assumptions on the meaning and intentions of the Act and its contents.

Section 2
Definitions

For the purposes of this response, it was determined that the given definitions would be analyzed in the order of their appearance in the various sections of the Provincial package rather than critiquing each word out of context.

Section 3
Pecuniary Interest

This section refers to the definition and constitution of a 'pecuniary interest'. The Municipal Conflict of Interest Act, 1983, failed to define what was meant by a pecuniary interest, but did include three classifications for pecuniary interest; direct, indirect and deemed. These terms are not expressed specifically in this draft, however they are implied in the subsections presented. Section 3 states:

"For the purposes of this Act, a person has a pecuniary interest in any matter in which a council, local board or advisory body, as the case may be, is concerned, if,

3(a) the person has a pecuniary interest in the matter;

(b) the person or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation or agency that does not offer its securities to the public,

(ii) has a controlling interest in, or is a director or senior officer of, a corporation or agency that offers its securities to the public,

(iii) is a member of a body,

(iv) is a partner or agent of a person, or

(v) is employed by a person or body,

that has a pecuniary interest in the matter; or

3(c) the person knows that the spouse or any minor child of the person or a private company as defined in the Securities Act controlled by the spouse or minor child has a pecuniary interest in the matter."

Subsection 3(b) refers to circumstances in which a member of a council, local board or advisory body should be fully cognizant of the existence of a pecuniary interest. With this interpretation, it is evident that clauses 3(b)(iii), (iv) and (v) should not be categorized in subsection 3(b), but rather included in subsection 3(c). The reason being, there is a knowledge provision in 3(c) which is necessary when interpreting all of these clauses. It would be very difficult to be aware of a conflict in these three scenarios.

RECOMMENDATION 4

That clauses 3(b)(iii), (iv), and (v) should be moved to subsection 3(c).

Definition of Spouse

In the definition section of the draft legislation, section 2, spouse is defined as:

> "a person of the opposite sex to whom the person is married or with whom the person is living in a conjugal relationship outside marriage."

AMO disagrees with this definition. For some members who are separated, it would be virtually impossible to be aware of the interests held by their estranged spouse. As a result of this uncertainty, the Association believes the definition of spouse should be expanded to read as presented in section 1 of the Member's Conflict of Interest Act, 1988:

> "a person who is the member's spouse within the meaning of Part III of the Family Law Act, 1986, but does not include a person to whom the member is married if they have made a separation agreement or if their support obligations and family property have been dealt with by a court order."

RECOMMENDATION 5

That "spouse" be defined in the Municipal Conflict of Interest Act as defined in the Member's Conflict of Interest Act, 1988.

Section 4
Exceptions of Pecuniary Interest

Section 4 provides a list of scenarios where pecuniary interests do not apply. The majority of these circumstances are referenced in the Municipal Conflict of Interest Act, 1983 with the following exceptions:

"4(i) by reason only of being a member of a council, local board, or advisory or other body when the membership is required by law by virtue of his or her office or results from an appointment by a council, local board or advisory body;

(l) by reason of membership on an English or French language section of a school board or an advisory body thereto if the board or advisory body is considering a matter related to language programming;

(m) by reason of membership in or volunteer activities for a non-profit organization, if the person receives no remuneration or financial benefit from the organization and the person's pecuniary interest is an interest in common with all other persons of the organization;

(n) by reason only of membership in a trade union as defined in section 1 of the Labour Relations Act or a professional association;"

The Association urges that subsection 4(n) not be included in this particular piece of legislation. Occasions may arise where a member of council is also a member of a union local which is involved in negotiations with another municipality. Those negotiations may have an impact on the same union's negotiations within the member's municipality.

As stated by the Minister of Municipal Affairs in the package of draft legislation:

> "In addition to the changes described above, I am proposing that the Ministries of Municipal Affairs and Education, in consultation with municipalities, school boards, local boards, and local government employee association, develop a model code of conduct for employees. I am also proposing that the restrictions on local government employees who seek locally elected office also be reviewed."

The Association recommends that subsection 4(n) be omitted from this legislation and included in the proposed model code of conduct for employees.

RECOMMENDATION 6

That subsection 4(n) be omitted from the legislation and considered when the Ministries of Municipal Affairs and Education, in consultation with municipalities, school boards, local boards, and local government employee associations, develop a model code of conduct for employees.

Section 5
Duty of Member at a Meeting of Council or Local Board

Section 5 of the draft legislation presents the duties of a member "where a member, either on his or her own behalf or while acting for, by, with or through another person, has any pecuniary interest in any matter which is the subject of consideration at a meeting of the council or local board".

In the Municipal Conflict of Interest Act, 1983, a member of a council or local board need only disclose an interest verbally which would then be recorded by the Clerk of the municipality or the secretary of the local board in the minutes of the meeting.

The draft legislation proposes a written disclosure of interest in addition to a verbal disclosure. Written disclosures have been a requirement of some municipalities for some time now. It is the understanding of the Association that if an item is discussed under "Other business", an oral disclosure as well as the filing of a written disclosure are to be made at that point in time.

The Association supports the proposal of filing a written disclosure since it is likely to eliminate potential problems. With solely oral disclosures, it is possible that a clerk of a municipality or the secretary of a local board may fail to record the general nature of the conflict.

However, the Association has difficulty with some of the wording and phraseology found within this section. Clause 5(1)(a)(ii) states that a member must:

> "complete and file, in the prescribed form, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board;"

The phrase, 'the prescribed form' is unclear and as a result causes some confusion for the reader. Is the form to be prescribed by regulation? The lack of clarity and direction in the above-mentioned phrase must be addressed by the Ministry.

A lack of consistency is also present in clause 5(1)(d) which states that the member:

> "if absent, shall disclose the interest in accordance with clause (a) at the next meeting of the council or local board that the member attends."

It is difficult for a member of council or local board to know the full details of a meeting if he or she was absent. Minutes from any meeting present only a brief outline of the discussion and fail to capture the totality of the events. As a result, it is possible for a member to be unaware of an issue until he or she is informed or present at the next meeting at which the topic is being discussed. Therefore, the Association recommends that clause 5(1)(d) read as does 6(1)(d):

> "if absent, after becoming aware that any matter in which the member had a pecuniary interest was the subject of consideration at a meeting of council or local board, shall disclose the interest in accordance with clause (a) at the next meeting of the council or local board that the member attends."

RECOMMENDATION 7

That the wording and phraseology of section 5 be reworked to provide for clear definitions, direction and consistency throughout the legislation.

Section 6
Duty of Member at a Meeting of an Advisory Board

This section defines the duties of a member if a pecuniary interest exists during a meeting of an advisory body to which the member has been appointed by a council or a local board. In this particular situation, an advisor on an advisory board would be required to make both an oral and a written disclosure. The difference between a member in this capacity and a member of council or local board is that the advisor may continue to take part in the discussion and may vote if necessary whereas a member of council must abstain from participating.

Upon reading this section, it is evident that once again, there is a lack of consistency from one part of the legislation to another. In clause 6(1)(a)(ii), it states that a member, if present:

> "shall complete and file, at or before the next meeting that the member attends of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board;"

Yet, in clause 6(1)(d)(ii), it states that if absent, after becoming aware that a matter in which the member had a pecuniary interest was discussed at a meeting of an advisory body, the member:

> "shall complete and file, before or at the next meeting of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board;"

This does not follow suit with the requirement set out in clause 6(1)(a)(ii).

RECOMMENDATION 8

That the wording be changed in clause 6(1)(d)(ii) to read as follows;

"shall complete and file, before or at the next meeting that the member attends of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board."

Section 7
Disclosure of Gifts

This section introduces a new concept which was not addressed in the Municipal Conflict of Interest Act, 1983. The idea of disclosing fees, gifts, and personal benefits is modelled after the Members' Conflict of Interest legislation which is applicable to members of the Provincial Government. In this Act, members of the Legislative Assembly are forbidden to accept a fee, gift or personal benefit unless it is received as a result of protocol or social obligation. This is identical to the proposal found in the Open Local Government package.

In principle, AMO agrees with this proposal; however, if this section is included in the legislation, it is necessary for the Province to define some of the requirements presented within.

Subsection 7(3) causes serious concerns for AMO in that it leaves a number of important issues undefined and open for broad interpretation.

"7(3) If a gift or personal benefit in subsection (2) exceeds $200 in value, or if the total value received directly or indirectly from one source in any twelve-month period exceeds $200, the member shall immediately file with the clerk of the municipality or the secretary of a local board, as the case may be, a disclosure statement, in the form prescribed by the regulations, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted."

Definitions

There are a number of recurring wording and definitional problems throughout this piece of draft legislation and this section touches upon a few of these. First of all, no where in the draft is there a definition of the phrase "one source".

The time frame of "twelve months" is also vague. Does this refer to a calendar year, or a fiscal year? It is essential that this period of time be specifically defined. If it remains as it appears, unnecessary problems will arise for clerks of municipalities and secretaries of local boards who will be responsible for the disclosures statements.

The reference to filing a disclosure statement "immediately" does not keep in step with time requirements suggested previously in the draft legislation. In the interest of consistency, the word "immediately" should be removed and replaced with the phrase "at the next meeting of the council or local board that the member attends."

The phrase "in the form prescribed by the regulations" is repeated throughout the draft and as previously mentioned, it is critical that these regulations be released prior to the passage of the legislation.

RECOMMENDATION 9

Assign definitions to "one source", and "twelve months" as referred to in subsection 7(3) of the draft legislation.

It is the Association's understanding that the Ministry of Municipal Affairs is considering amending subsection 7(3) with regard to the dollar value assigned therein. The Association welcomes this proposal and recommends that any changes be consistent with the Member's Conflict of Interest Act, 1988 and any future amendments to this Act. However, AMO stresses the need for the wording to be consistent with the philosophy that a member need only disclose the acceptance of a fee, gift or personal benefit, in circumstances where acceptance of the gift, fee or benefit may affect the decision-making of the council.

Section 8
Disclosure of Assets

♦ **AMO's Disclosure Requirements**

The disclosure of assets and liabilities is an area of grave concern to the Association and its member municipalities. In smaller communities, disclosing this personal information would be a deterrent for many potential municipal candidates. Overall, the Association feels that the disclosure of assets and liabilities set out in the draft legislation would be an infringement on a member's and his or her family's privacy. The fundamental problem with this disclosure requirement is that the majority of members of councils and local boards carry out these duties on a part-time basis while continuing in a full time capacity in their own business or profession.

The following requirements have been presented in the draft legislation:

"8(2) Subject to subsection (3) every member shall, within sixty days of being elected or appointed, file with the municipal clerk or the secretary of the school board, the public utility commission or the police village, as the case may be, a disclosure statement in the form prescribed by the regulations.

8(3) The disclosure statement shall contain,

(a) a statement of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them;

(b) a statement of the source of any income the member and the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them, have received in the preceding twelve months or are entitled to receive in the next twelve months; and,

(c) any information that is prescribed by the regulations."

AMO is concerned with the potential for undue scrutiny of the personal lives of members and potential members of municipal councils and local boards if section 8 remains as presented in the draft legislation. Subject to AMO's review and approval of the prescribed forms set out in the

regulations, the Association would be willing to support only the disclosure of the following items of a member, member's spouse, minor children and private company:

- real property owned within the jurisdiction of the member's municipality;
- ownership of shares in private companies; and,
- sources of income.

This information would be filed with the clerk of the municipality or the secretary of the local board as proposed in the draft legislation.

RECOMMENDATION 10

Omit the disclosure of assets and liabilities of a member, member's spouse, minor children and private company with the exception of; real property owned within the jurisdiction of the member's municipality, shares in private corporations, and sources of income, all of which are subject to AMO's approval of the regulations.

As previously stated, the Association is not in a position to support the proposed disclosures as set forth in the legislation without knowing the contents of the regulations. AMO would agree to the disclosure of its modified list only under the following conditions.

Disclosure of Real Property

The Association is aware that at each of the 24 province-wide consultation meetings held by the Municipal Conflict of Interest Consultation Committee, the concern that was raised most often by the public was the issue of land ownership by members of municipal councils and local boards as it relates to the municipality's ownership and selling of real property. As a result of this recurring concern, the Association supports the disclosure of real property as public information, with the stipulation that the land owned would be within the jurisdiction of the member's municipality.

RECOMMENDATION 11

That the real property disclosed be within the jurisdiction of the member's municipality.

Disclosure of Sources of Income

The Association has concerns with the uncertainty of the extent and details of the statement to be filed when disclosing sources of income. AMO accepts this requirement under the condition that this information be of a general nature and not a detailed account.

RECOMMENDATION 12

That the disclosure of sources of income be of a general nature.

Disclosure of Shares in Private Corporations

AMO's support for the disclosure of shares in a private corporation is dependent upon the definition of "controlled". In clause 8(3)(b), the draft legislation refers to the Securities Act for further definition of the content. As this clause reads in the draft legislation, the Securities Act is only defining the term "private companies" failing to include "controlled" in that definition. As a result, controlled is understood to be defined as in section 2 of the Conflict of Interest draft legislation. This is a concern since controlled in the draft is defined as 10% of the voting rights while the Securities Act defines it as 50% or more. This ambiguity should be addressed by eliminating the reference to another Act. The Association believes that the definition of controlled should be included in the legislation proper to alleviate further references to other pieces of legislation. Furthermore, the Association recommends controlled to be defined as 50% or more shares.

RECOMMENDATION 13

That "controlled" in clause 8(3)(b) be defined as 50% or more voting shares and that this definition be included in the Municipal Conflict of Interest Act.

As previously stated, AMO's support for its modified list of disclosures is dependent upon the above-mentioned factors, most notably the contents and approval of the regulations. Furthermore, AMO would appreciate the opportunity to be a part of the consultation process upon release of these regulations.

Filing of Disclosure Statements

AMO realizes the disclosure requirements set forth in the draft legislation are less descriptive than the disclosure statements required by a Member of the Legislative Assembly. However, it is important to note that any information disclosed by a member of a municipal council or local board would be more accessible to the public. AMO understands that all detailed disclosures provided by Provincial members include dollar values and this information is filed with their own Commissioner. This is then amended to include only the general information eliminating the respective dollar amounts and filed in the Office of the Clerk of the Legislative Assembly.

If an individual wishes to view these documents, they are required to be physically present in the Clerk's office to do so. However, this office is located in Toronto and not easily accessible to all members of the public.

Supplementary Disclosure Statement

In addition, the Association has noted a variance between the requirements of filing supplementary disclosure statements for provincial members and municipal members. In subsection 8(6) of the draft legislation, members of municipal councils and local boards are required to file any changes to the original disclosure statement within 30 days of that change. This unnecessary condition would create a complex administrative ordeal for the clerk.

The Members' Conflict of Interest Act, 1988, subsection 12(1), requires members of the Legislative Assembly to file a disclosure statement on an annual basis in order to capture

any changes to the initial disclosure of information. The Association believes this to be a more reasonable requirement than that set forth in the draft legislation.

RECOMMENDATION 14

That supplementary disclosure statements be filed annually.

Furthermore, AMO would like to address a descriptive error in section 8 of the draft legislation. In clause 8(1)(d), it states that a "police village" is also required to disclose assets and liabilities. This phrase should read "a board of trustees of a police village" and should be amended accordingly.

RECOMMENDATION 15

Amend clause 8(1)(d) to read "a board of trustees of a police village".

Sections 9 - 14
Enforcement of Members Duties

Sections 22 - 25
The Commissioner

In this part of the report, the Association has decided to examine the enforcement of members' duties in conjunction with the duties of the proposed Commissioner.

In the Municipal Conflict of Interest Act, 1983, the onus is on the individual to prosecute a member of a municipal council or local board if he or she believes a contravention has taken place. In pursuing this action through the courts, the individual faces a complex and costly procedure. The Consultation Committee on the Conflict of Interest received numerous submissions suggesting the introduction of an alternative method of enforcement. A number of options were presented to the Province by the Committee each concentrating on relieving the elector of this burden of enforcement. Upon reviewing these options, the Province proposed the appointment of a Municipal Conflict of Interest Commissioner to advise, investigate and recommend prosecution with respect to alleged conflicts. The Commissioner would report to the Legislature, and be funded by municipalities and boards covered by the Act.

Duties of the Commissioner

As mentioned in the report by the Conflict of Interest Consultation Committee, a primary objective of the Act is to enhance the public's confidence in the decision-making practices of local government bodies. It is unreasonable therefore to place the responsibility for enforcement on the individual elector as is presently the case. Thus, the appointment of the Commissioner is intended to provide timely resolution of complaints and consistent applications of the legislation.

The Association supports the concept of appointing a Commissioner to alleviate the time and costs involved with court cases. However, the Association has concerns with the powers delegated to the proposed Commissioner. The Commissioner would be empowered to investigate and report on allegations made against a member of a council or local board by the public. The Commissioner's duties then go one step further as set out in subsection 24(1):

"24(1) The Commissioner may initiate legal proceedings against any person in respect of a contravention of this Act."

AMO does not agree with the proposed powers of the Commissioner as set out in subsection 24(1). The Commissioner should not have the authority to both investigate and initiate legal proceedings with regard to allegations brought forward. The Association believes the duties of the Commissioner should include only the investigating and the reporting of an allegation. The initiation of legal action should rest with the individual alleging the wrongdoing.

Moreover AMO does not support the proposals contained in clauses 10(6)(a), and (b):

"10(6) Upon completion of the investigation under subsection (4), the Commissioner,

(a) shall prepare a report outlining the apparent contraventions, if any, of section 5,6,7, or 8 by the member and submit it to,
(i) the member,
(ii) the person who applied under subsection (1), and
(iii) the council of the municipality or local board, as the case may, on which the member holds office;

(b) may, if the Commissioner considers it appropriate, apply to a judge for a determination of the question of whether the member has contravened section 5,6,7, or 8;"

Once again, the Commissioner should not be given the power to initiate legal action as suggested above in 10(6)(b). This responsibility should rest with the individual presenting the allegation.

RECOMMENDATION 16

Omit subsection 24(1) and clause 10(6)(b) outlining the Commissioner's right to initiate legal proceedings.

Furthermore, the wording of clause 10(6)(a) infers that there is likely to be a contravention of the Act when an investigation is undertaken. AMO therefore recommends that clause 10(6)(a) be reworded to remove this bias.

RECOMMENDATION 17

That clause 10(6)(a) which reads in part "shall prepare a report outlining the apparent contraventions, if any, of section 5,6,7 or 8 by the member and submit it to..." be amended to read, "shall prepare a report outlining the findings of fact, and submit it to..."

Access to Commissioner

AMO does not see the purpose of appointing a Commissioner if an individual's sole recourse is through section 10 of the legislation which states:

"10(1) If a person has reasonable grounds for believing that a member has contravened section 5,6,7, or 8, the person may apply, in the prescribed form, to the Commissioner requesting that the Commissioner investigate the alleged contravention.

(2) A person can only make application under subsection (1) within 90 days after the person becomes aware that the member may have contravened section 5,6,7, or 8.

(3) An application under subsection (1) shall include a statutory declaration of the person containing,

(a) the reasonable grounds for believing the member has contravened section 5,6,7 or 8; and,

(b) a statement that the person became aware within 90 days of the application being made that the member may have contravened section 5,6,7 or 8."

An individual would be required to make an application to the Commissioner within 90 days of becoming aware of a potential contravention. However, this application would require the individual to seek legal advice beforehand in order to prepare a statutory declaration. The drafting of this legal document would involve a cost to the individual and would defeat the whole purpose of the appointment of the Commissioner.

The Association must again impress upon the Province the notion of "equal partners". If the Province is to establish a municipal Commissioner who is responsible for the disclosure of various information items, its activities should be modelled after its Provincial counterpart. In section 14 of the Members' Conflict of Interest Act, 1988, it states:

"14(1) A member may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under the Act.

(2) The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member with a written opinion and recommendations."

It is obvious from this section, the Provincial Commissioner is seen as a source for information. His or her duties consist of reviewing an allegation and reporting on the outcome if deemed necessary. However, cases may arise when it is not necessary for the Commissioner to prepare a report on a particular issue in question.

The municipal legislation must also enable an individual to contact the Commissioner without a statutory declaration if there is belief a contravention has been committed. The Commissioner would then act on an informal basis as an information bank providing direction to individuals. A toll free number should be provided to allow the public easier access.

Reporting Requirements

Section 10 also states that the Commissioner shall prepare a report outlining the apparent contraventions of the Act by the member. Once a report is prepared and released by the Commissioner as a public document, even if the report is in favour of the member, his or her name has been tarnished. AMO recommends that, if the Commissioner deems a case to be frivolous, instead of issuing a report, the Commissioner shall simply send a letter to the parties involved. If this alternate route is available to the Municipal Commissioner, excess time and expenses would be avoided.

RECOMMENDATION 18

Amend section 10 to allow an individual to make a preliminary informal application to the Commissioner and to allow the Commissioner an informal option to report.

Right of Access to Documents

In addition to the Commissioner's proposed power to initiate legal proceedings, the Association has problems with clause 10(5)(a):

"(5) for the purpose of conducting an investigation under this section, the Commissioner,

(a) has the right of access, at all reasonable hours, to all relevant books, papers, documents or things of the member and of a municipality or local board;"

The latitude provided to the Commissioner in this clause is unacceptable. The term "reasonable" is open to many interpretations as is the word "things". Second, the Association is concerned with the suggested access to "all relevant books, papers, documents or things of the member". It is unreasonable to allow the Commissioner the powers to invade a member's right to privacy in his or her own home.

AMO accepts the proposal of access to municipal documents if they are available for public information within the municipal or local board office; however, this access must adhere to the protection prescribed in the Freedom of Information and Protection of Privacy Act, 1989.

It is the Association's opinion that the Commissioner should be given the option to exercise the powers of a commission under Parts I and II of the Public Inquiries Act as outlined in section 16 of the Members' Conflict of Interest Act, 1988 in dealing with the investigation of an allegation.

RECOMMENDATION 19

Amend clause 10(5)(a) to include the protection found in the Freedom of Information and Protection of Privacy Act, 1989 and allow the municipal Commissioner the option to exercise the powers as provided to the provincial Commissioner.

Bona Fide Error

In subsection 10(2) of the Municipal Conflict of Interest Act, 1983, a judge could use the argument that a member committed a contravention through inadvertence or by reason of *bona fide* error. In subsection 14(2) of the Members' Conflict of Interest Act, 1988, the Provincial Commissioner is also provided the opportunity to dispose of cases regarded as frivolous and permitted the use of the *bona fide* argument which has been eliminated from the Municipal Conflict of Interest draft legislation.

As stated in the Report of the Municipal Conflict of Interest Consultation Committee, in twenty-eight court cases heard in Ontario since 1972, it was determined that a contravention of the Act occurred in twenty-five cases. In those cases where a contravention was proven, the majority were excused from the penalties by a judge for reasons of inadvertence or *bona fide* error in judgement. Obviously, there are circumstances in which a member may not be aware of the fact that he or she is in conflict. It is for this reason that the Association strongly urges the Province to retain this saving provision in the legislation.

RECOMMENDATION 20

Include a provision in the legislation to allow the Commissioner's use of inadvertence and 'bona fide' as described in the Members' Conflict of Interest Act, 1988.

Person vs Individual

Furthermore, the Association urges the Province to amend the term "person" in section 10 of the draft legislation. The Association understands the need to replace the word "elector" as presented in the Municipal Conflict of Interest Act, 1983 since it was limited to individuals falling within the legal definition of the word (i.e. Canadian citizens). At the same time, "person" as defined in this draft legislation has been broadened too far with the inclusion of corporations. The Association believes the purpose of this legislation is aimed at the protection of a municipality and the individuals and land holders within that municipality. Therefore, an individual should be defined as a property owner or a resident within the municipality.

RECOMMENDATION 21

Amend the word "person" in section 10 of the Act to be defined as "an individual who is a property owner or a resident within the municipality."

Notification of a Member

The draft legislation does not include a provision whereby a member is formally notified once an allegation has been launched. AMO strongly believes the member who is being accused of a wrongdoing has the right to know what action is being taken. It is very possible that the member, upon learning of the conflict, may rectify the situation immediately and eliminate the time and cost of the Commissioner's investigation. In the Members' Conflict of Interest Act, 1988, subsection 16(1) it states that *"upon receiving a request under section 15, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry."* If this is a condition for Members of the Provincial Government, then this condition should also be extended to members of municipal councils and local boards.

RECOMMENDATION 22

That the legislation be amended to require the Commissioner to immediately inform a member if a contravention has been alleged by an individual.

Funding of the Commissioner's Office

AMO believes that if the Province imposes levies on municipalities in order to fund the Commissioner's operations as suggested in the draft legislation, certain conditions must be accepted by the Province.

- Municipalities, perhaps through AMO, must maintain budgetary control over the Commissioner's operations to ensure that the cost of the operations do not become onerous.

- The Commissioner be given extensive latitude to deal with the majority of allegations in order to prevent these cases from being tried in the courts.

In keeping with the spirit of the disentanglement process, it is the Association's position that if municipalities are going to pay for policing their own members, then they should have control over the body delegated to perform this duty. As expressed in AMO's 1991 Cabinet Submission Disentangling the Provincial-Municipal Relationship,

> *"..the policy setting, provision and financing of provincial and municipal services are grossly "entangled", and this entanglement has a profound negative impact on government accountability, economy, efficiency and effectiveness."*

If the Province moves forward with the proposals presented in the draft legislation, yet another service would become entangled.

Option Paper

Unfortunately, at present, the Province has not disclosed the costs involved in the running of such a body, nor have they released the basis of the levy. However, it is understood that the Province is preparing a paper outlining the various options available for the funding of the Commissioner's office. This paper will not be released prior to AMO's response to the draft legislation; however, the Ministry has

informed AMO that consultation will take place when this option paper is completed.

Consequently, it is difficult to endorse a proposal with most of the facts and figures absent. Municipalities are encountering economic hardships and as a result are not willing to support an idea without a price tag attached.

RECOMMENDATION 23

Release the Commissioner's office funding option paper prior to the introduction of the legislation.

The Conflict of Interest Commissioner - AMO's Proposal

In this segment of the report, rather than speaking directly to the particulars of the draft legislation, the Association has decided to deviate from the specifics and present its view on the process for resolving conflict allegations in general.

In light of the problems already addressed concerning the appointment of a Commissioner on Conflict of Interest, the Association of Municipalities of Ontario has determined the need to provide an additional and fundamental option that was overlooked by the draft legislation.

The Minister of Municipal Affairs continues to refer to municipalities as an "equal partner" to the Province, yet this view has not been incorporated into this package of draft legislation. In keeping with the theme of disentanglement, if municipalities are to pay for a body policing their own activities, then they should have full control over the existence and functions of that body.

In subsection 16(3) of the Members' Conflict of Interest Act, 1988 it states:

> "16(3) Where the request for an opinion is made under subsection 15(1) or (2), the Commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session."

In this case, a member of the Legislative Assembly or the whole Assembly may apply to the Provincial Commissioner for an opinion if they believe another member has contravened the Act. Once the Commissioner has reported

his or her opinion on the matter, this is then presented to the Legislative Assembly. In other words, the power to receive and decide on a report is with the Provincial members themselves. This scenario should hold true for municipal councillors and local board members. If municipalities are to pay for their own policing, then a true, self policing model procedure must be established.

Tribunal

AMO recommends that a tribunal of municipal members of council and local boards be created to deal with a completed report of the Commissioner. With this concept, the tribunal would sit as judge and determine the appropriate penalty for the contravention within the guidelines set out in the legislation. Such a system would greatly reduce the costs incurred by both municipalities and local boards, as well as individuals bringing allegations forward, as expenses and time consumed by court proceedings would be completely avoided.

This suggested structure is similar to those of the Law Society of Upper Canada, the College of Physicians and Surgeons of Ontario, and the Institute of Chartered Accountants of Ontario. Each of these organizations elects, from its own membership, a tribunal to prosecute and determine penalties for their fellow members who require disciplinary action.

To use the Institute of Chartered Accountants as an example, the council, which is elected annually by the membership of this institute, appoints members to various committees, one being the Provincial Conduct Committee which investigates allegations and if it deems necessary will determine if prosecution is required. If prosecution is recommended, the Provincial Conduct Committee will bring the case forward to the Disciplinary Committee. This committee, sitting as judge, holds the hearings and determines the penalty.

As outlined in the Members' Conflict of Interest Act, 1988, a similar structure exists for provincial members. Once the Commissioner has completed his or her report, it is laid before the Legislative Assembly. This body accepts or rejects the contents of the report including the suggested penalty.

RECOMMENDATION 24

That a tribunal consisting of municipal and local board representatives be appointed to receive the Commissioner's report, determine whether a contravention has taken place and impose the appropriate penalties.

Section 15
Duty of Advisor

The addition of an advisor is a new concept to this piece of legislation. The Association questions the purpose of this section and what problems it is aimed at correcting. Does it apply to members of staff? Further definition is required for the terms advisor and advisory body since there is uncertainty as to whom this section applies. In addition to this lack of clarity, a sense of uneasiness results from the contents of subsection 15(2):

"15(2) Every person who contravenes this section is guilty of an offence."

It is the understanding of the Association that this offence refers to an offence under the Provincial Offences Act. This troubles this Association in that if an offence does occur, an advisor would be faced with criminal charges and a completely different manner of prosecution than set forth for a member of a municipal council or local board. The Association is disturbed with the severity in dealing with an offence in this case and further questions what sanctions would be imposed if an advisor was alleged of a contravention since advisory positions are short-term.

Thus, the Association urges the Province to omit section 15 from the legislation and capture all bodies to which the legislation is to apply in the local board definition provided in the definition section of the legislation. As a result of deleting this section, all further references in the draft legislation pertaining to advisor should be deleted.

RECOMMENDATION 25

That section 15, duty of an advisor, be omitted from the legislation and that all bodies to which the legislation will apply be set out in the "local board" definition.

Section 16 - 17
Record of Oral Disclosure

First, in this section there is a constant reference to "declarations of interest" which does not follow with the previous references in the draft legislation to "pecuniary interest". The Association urges that the legislation be a concise and consistent reference document.

Second, the Association feels that subsection 16(2) needs to be reexamined and clarified:

"16(2) Every declaration of interest made under section 5 or 6, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public."

Situations arise when an open meeting includes a closed session as a result of the nature of the topic being discussed. In this particular instance, if a pecuniary interest results during this time, would a member be required to declare this interest once the open meeting resumes or at the next meeting? The Association is of the belief that the declaration should be made at that particular meeting rather than the next meeting . This question should be addressed in the legislation.

RECOMMENDATION 26

Amend subsection 16(2) to clearly define the timing of the declaration.

Offences
Section 19

Section 19 of the draft legislation states:

"19(1) A member, former member, advisor or former advisor shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further his or her interest or the interests of any other person.

(2) A member, former member, advisor or former advisor shall not provide information described in subsection (1) to any other person."

Section 19 as presented in the draft legislation allows for various interpretations. The use of the word "interest" in subsection 19(1) creates confusion for the reader. Does this refer to a pecuniary interest as referred to throughout the draft legislation? Similarly, in that subsection, "information that is not available to the general public" brings about questions as to the extent of confidentiality of this information. The Association stresses the use of the term "confidential information" in describing the conditions in subsection 19(1).

RECOMMENDATION 27

Clearly define the terms "interest" and "information" in subsection 19(1).

Situations may arise when an issue discussed in a closed meeting requires some follow-up by an advisor to fulfil the functions of a municipality. Under the proposed legislation, however, a member involved in the discussion is bound by the confidentiality requirement in 19(1) and if any information is released, that member is guilty of an offence according to section 21 of the draft legislation. Therefore, the Association urges the Province to delete subsection 19(2) from the legislation.

RECOMMENDATION 28

Delete subsection 19(2) from the legislation.

Section 20

Section 20 of the draft legislation states:

"20(1) No municipality or local board shall employ, or engage as an agent or independent contractor any person who is a former member of the council of the municipality or of the local board, as the case may be, until at least six months after the person ceases to be a member of the council or local board.

(2) No person who is a former member of a council of a municipality or of a local board shall become an employee, independent contractor or agent of the municipality or local board, as the case may be, until at least six months after the person ceases to be a member of the council or local board."

Employment of Former Members of Council and Local Boards

As stated earlier in the report, many members of municipal councils and local boards assume these positions on a part-time basis while continuing to work in their primary business or profession. As a result, in smaller and rural municipalities in particular, it is not uncommon for an individual to be the sole supplier of goods or services in the area and consequently the sole supplier to the municipality. This is the member's livelihood. However, as stated in this draft, this individual would be required to abstain from his or her business or profession for a period of six months after being a member, but not required to do so while being a member of council or local board.

The requirement in this section of the legislation is much more onerous than that established for Provincial members. In section 7 of the Member's Conflict of Interest Act, 1988 a number of variances appear:

"7(1) The Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council, until twelve months have expired after the date when the former member ceased to hold office;

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit;

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit.

(2) Clauses (1)(a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

(3) Clauses (1)(a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled."

The Association strongly believes that the proposals outlined in Open Local Government should not be any more stringent than what is set out in the Member's Conflict of Interest Act, 1988. As noted in subsection 7(1) of the Member's Conflict of Interest Act, 1988, the onus is only on Cabinet Ministers to adhere to this requirement, whereas the onus is on all members of councils and local boards to follow this requirement. Former Cabinet members are permitted to accept contracts or benefits within the Provincial or Federal levels of government. In addition, a former Cabinet Minister may be awarded a position through a tendering process.

The Association questions why similar exceptions have not been provided to municipal members of councils and local boards when the livelihoods of these individuals would be directly affected. A member of a council or local board should have the right to be included in a tendering process since it is a just and fair method of awarding contracts.

RECOMMENDATION 29

Amend subsection 20(1) to appropriately incorporate exceptions extended to Members of the Legislative Assembly and delete subsection 20(2).

Section 21

In keeping with a previous statement recommending the omission of section 15, the duty of an advisor, AMO urges the Province to revisit the contents of sections 19 and 21. As a result of the inclusion of advisor and former advisor in section 19, a contravention results in an offence which would assumingly be dealt with under the Provincial Offences Act. With AMO's suggested omission of the duties of an advisor, section 21 should be amended accordingly. Section 19, with AMO's modification, deals strictly with a member or former member and as a result, section 21 should reflect this. The amended clause in section 21 should refer to the penalty of a contravention being subject to the general process put in place for the proposed Commissioner and court system or the modified AMO tribunal system.

RECOMMENDATION 30

Delete references to "advisor" or "former advisor" in section 19 and amend section 21 accordingly.

Section 26 - 30
General

The Association is quite puzzled as to the inclusion of this segment in the draft legislation. The duties specified in these sections are already assigned in the Municipal Act. One of the purposes of the proposed Municipal Conflict of Interest Act is to standardize procedures relating to this issue, but this would not be accomplished with a variety of by-laws in place province-wide as suggested in section 26.

Section 26

"26(1) A municipality or local board may, with the approval of the Commissioner, pass bylaws to establish its own standards of conduct for members and advisors regarding conflict of interest.

(2) The by-law establishing the standards of conduct shall be filed with the Commissioner.

(3) In the event of a discrepancy between a by-law and this Act, the more stringent standard of conduct prevails."

If each municipality passed a by-law, the Commissioner would be required to be familiar with each and every existing by-law when reviewing applications. Also, local boards do not have the power to pass by-laws. It is ludicrous to claim that a by-law prepared by a library board would allow for the removal of a member of council.

As for 26(3), it is unlikely that a body will impose a more stringent standard of conduct than what is presented in this package.

Consequently, the Association recommends the deletion of section 26.

RECOMMENDATION 31

Omit section 26 of the draft legislation.

Section 27

The Association is concerned with the contents of sub-section 27(1):

"27(1) Despite section 252 of the Municipal Act, the council of every municipality may at any time pass by-laws,

(a) for contracting for insurance;

(b) for enabling the municipality to act as an insurer, despite the Insurance Act;

(c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act to protect a member of the council or of any local board thereof or an advisor who has been found not to have contravened section 5, 6, 7, 8 or 15 against any costs or expenses

incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses."

The heart of the problem lies in clause 27(1)(c). It is the Association's opinion that the section of clause (c) *"to protect a member of the council or of any local board thereof... or expenses."* should be a separate paragraph under subsection 27(1). This clause relates to all of the clauses in 27(1), not strictly (c) as presented here.

In addition to the structural problems cited, clause 27(1)(c) does not apply to the protection of a member if a report has been submitted by the Commissioner but no legal proceedings have taken place. It is quite possible that a member at this point in the process had already sought legal advice. The member's loss of time, travel costs and other sundries have not been accounted for in this section and it is essential that these costs be acknowledged in the legislation.

RECOMMENDATION 32

Amend the structure of clause 27(1)(c) and incorporate the protection of a member in a case where no legal procedures have taken place.

Subsection 27(1) should be amended to provide greater protection for members of municipal councils and local boards. Therefore, municipalities should be granted mandatory authority to pass by-laws dealing with insurance coverage of members.

RECOMMENDATION 33

That the contents of subsection 27(1) be made mandatory rather than permissive.

Form 3 of the Municipal Act

A number of structural changes have been suggested by the Association to allow for a clearer and more concise form. The Association believes that subclause 2) be rephrased by removing "have read, understood". It is not feasible for a member who has just been elected, or even reelected for that matter, to fully understand the contents of this legislation. Also, clause 3 should be completely omitted from this form since this concept has already been laid out in the legislation and need not be repeated in the form. Lastly, the form should not be presented in the manner it is in the draft legislation. It should be presented as one paragraph, rather than divided into subsections.

With AMO's modifications, Form 3 would appear as follows:

> *I, _____, do solemnly declare that I will faithfully and impartially, to the best of my ability, execute the office of _____ to which I have been elected in this municipality, and that I have not accepted and will not accept any payment or reward for the exercise of any partiality, dishonesty or other undue execution of this office; I agree to comply with the provisions of the Municipal Conflict of Interest Act; and, I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force as if made under oath.*

RECOMMENDATION 34

Amend Form 3, the declaration of elected official, to read as presented above.

5 OPEN MEETINGS

In 1985, AMO endorsed a resolution which expressed its willingness to work with the Ministry of Municipal Affairs to develop a model municipal procedural by-law which would contain guidelines for applying general principles relating to open meetings and access to information. In 1990, the Province introduced Bill 152: An Act to Amend the Municipal Act. In this Bill, certain proposals were presented and although AMO has had a long-standing position of supporting the concept of open meetings, the Association felt that this Bill went too far with the concept. Fortunately, the Bill died on the Order Paper.

This piece of draft legislation re-introduces the principle of open meetings proposed by Bill 152. This draft legislation proposes repealing section 55 of the Municipal Act and in its place substituting the suggestions presented in the Open Local Government package. AMO supports and welcomes the principle of open meetings, but has concerns with the wording and phraseology of the legislation found within the package.

In subsection 55(1), a definition of a local board is provided as defined in the Municipal Affairs Act. This definition should be in the Municipal Act rather than a separate piece of legislation. Upon reading this draft, local boards are defined differently on a number of occasions. It is essential that a standard definition be used consistently throughout the legislation.

RECOMMENDATION 35

Define "local board" in the Municipal Act.

Subsection 55.1(1) of the draft legislation states:

"55.1(1) Every council and local board may adopt a procedure by-law for governing the calling, place and proceedings of meetings, and the conduct of members.

(2) The Minister may make regulations prescribing standards for the calling, place and proceedings of meetings of councils and local boards, and the conduct of members.

(3) In the event of a conflict between a procedure by-law passed under subsection (1) and a standard prescribed under subsection (2), the provision providing for greater access by the public to meetings or the more stringent provision governing the conduct of members prevails."

Under the Municipal Act, municipalities are able to determine the procedures for the calling, place and proceedings of meetings at their own discretion. In light of this, the Association finds subsection 55.1(2) to be largely intrusive in the every day conduct of municipalities and believes it should be deleted from this piece of legislation. Consequently, subsection 55.1(3) would also be deleted. If regulations are introduced, they should undergo the formal process set forth in the Regulations Act rather than having the Minister prescribe the standards in the regulations.

RECOMMENDATION 36

Delete subsection 55.1(2) and consequently subsection 55.1(3).

Furthermore, the Association feels that the adoption of a procedure by-law should be mandatory rather than permissive as outlined in subsection 55.1(1). Therefore, subsection 55.1(1) should be amended to reflect this requirement.

RECOMMENDATION 37

Amend subsection 55.1(1) to read "every council and local board shall adopt a procedure by-law for governing the calling, place and proceedings of meetings, and the conduct of members."

Further, amendments should be made to subsection 55(6).

"55(6) If all or part of meeting is closed to the public, the clerk of the municipality or the recording official of the local board shall record in the minutes of the meeting where the decision to close is made,

(a) the time and fact of the holding of the closed meeting;

(b) the matter considered at the closed meeting;

(c) the clause or clauses in subsections (4) or (5) that were relied on to justify having the closed meeting; and

(d) the reasons why a closed meeting was necessary."

The contents of 55(6)(b) and (d) are redundant and not necessary in this section. The fact of the meeting is required under clause (a).

RECOMMENDATION 38

Delete clauses 55(6)(b) and (d).

6 DISPOSAL OF PROPERTY

At present, the Municipal Act, gives municipalities and their local boards, except boards of education, total discretion to sell real property, provided that the purchaser may lawfully buy the property and the council acts in good faith.

The draft legislation would repeal the current section 193 of the Municipal Act and replace it with a new section which prescribes a formal and open process.

The explanatory notes to the draft legislation state that:

> "Depending on the outcome of the Government's consultation on provincial acquisition of land for housing, the Province may reserve the right to acquire surplus municipal and local boards' real property."

This reference is related to the proposals in the Provincial Government's consultation paper Government Land for Housing, which recommended that the Province be given a "right of first refusal" to purchase surplus municipal lands for housing purposes. In its response to this proposal, AMO was opposed to this recommendation and indicated that further consultation was necessary and that a "right of first notification" should be sufficient.

The Association once again has problems with the drafting of this proposal. As stated previously, it is essential to have a definition of a "local board" within the legislation and to use this definition consistently throughout the document.

In subsection 193(4) a number of problems have been perceived with both the content and the wording.

"193(4) Before selling any real property, every council and local board shall,

(a) declare at a meeting open to the public the real property to be surplus and no longer required for its purposes; and

(b) obtain at least one appraisal of the fair market value of the real property."

Appraisals

What is meant by an "appraisal"? Does this include in-house appraisals which are an option for some municipalities? Concerns were also raised as to the scope of these

appraisals. The Association is disturbed with the idea that an appraisal would be required on even on the sale of minor properties. If this is the case, then unnecessary time, effort and monies will be spent to fulfil this requirement.

RECOMMENDATION 39

Clarify subsection 193(4) to explain when and what kind of appraisal is required.

There is also no mention in the draft legislation of a consequence if a municipality contravenes the requirements set out in subsection 193(4). If the sale of property does not meet the requirements set out in section 193, is it void or voidable? What is the process and what are the rules for voiding such a sale? These are key issues that must be addressed and explained in the legislation.

RECOMMENDATION 40

Provide a consequence provision if a municipality contravenes the requirements set out in subsection 193(4).

In subsection 193(5):

"193(5) The Minister may make regulations prescribing,

(a) standards of procedure for the sale by municipalities or local boards of real property by public tender, public auction, or otherwise;

(b) a class or classes of real property to which subsection (4) does not apply;

(c) the form and contents of a certificate of compliance with section 193;

(d) the duties of the clerk of the municipality or the administrative head of the local board with respect to the certificate of compliance with section 193."

Provisions related to the effect of a certificate of compliance and the procedures for registering a certificate of compliance on title must be included in the legislation, not in the regulations.

In addition, classes of real property to which subsection 193(4) does not apply, should be specified in the legislation rather than the regulations. Regulations change more frequently than legislation and information on previous regulations is not always readily available. This could cause problems with regard to subsequent purchases of the property. As a result, a lawyer is faced with the uncertainty of the contents of the regulations at the time of a sale. Moreover, the certificate of compliance should contain an alternative statement of compliance with the exclusions rather than section 193(4).

RECOMMENDATION 41

That items detailed in clauses 193(5)(b),(c) and (d) be set out in the legislation proper rather than in the regulations.

Subsections 193(7), (8), and (9) of the draft legislation deal with the registration of real property owned or leased by the municipality, or local board. In subsection 193(8) it states:

"193(8) The Minister may make regulations prescribing standards for the establishment and maintenance of registries of real property owned or leased by municipalities and local boards, and for access by the public to those registries."

In regard to the issue of registries of real property, they should be mandated in the legislation if that is what the government intends. The form may be set by regulation. The alternative of a by-law should be deleted.

RECOMMENDATION 42

Delete the alternative of a by-law and mandate the registries for real property in the legislation.

7 CONCLUSION

In conclusion, the Association of Municipalities of Ontario requests that the Province not proceed with the proposed legislation until consideration is given to the comments found herein. AMO has presented certain modifications which are in accordance with the disentanglement exercise currently in process. If municipalities are regarded by the Province as equal partners, then they should be treated in such a manner.

The Association appreciates the opportunity to comment on the package, Open Local Government and hopes that its input will help in producing clearer and more workable legislation.

8 SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

That mandatory disclosure of assets not be required in mid-term, but made effective at the date of registration for the November 1994 municipal election.

RECOMMENDATION 2

Extend the disclosure of assets and liabilities to include all candidates seeking office.

RECOMMENDATION 3

That the Province extend the deadline of the consultation period by one month.

RECOMMENDATION 4

That clauses 3(b)(iii), (iv), and (v) should be moved to subsection 3(c).

RECOMMENDATION 5

That "spouse" be defined in the Municipal Conflict of Interest Act as defined in the Member's Conflict of Interest Act, 1988.

RECOMMENDATION 6

That subsection 4(n) be omitted from the legislation and considered when the Ministries of Municipal Affairs and Education, in consultation with municipalities, school boards, local boards, and local government employee associations, develop a model code of conduct for employees.

RECOMMENDATION 7

That the wording and phraseology of section 5 be reworked to provide for clear definitions, direction and consistency throughout the legislation.

RECOMMENDATION 8

That the wording be changed in clause 6(1)(d)(ii) to read as follows;

"shall complete and file, before or at the next meeting that the member attends of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board."

RECOMMENDATION 9

Assign definitions to "one source", and "twelve months" as referred to in subsection 7(3) of the draft legislation.

RECOMMENDATION 10

Omit the disclosure of assets and liabilities of a member, member's spouse, minor children and private company with the exception of; real property owned within the jurisdiction of the member's municipality, shares in private corporations, and sources of income, all of which are subject to AMO's approval of the regulations.

RECOMMENDATION 11

That the real property disclosed be within the jurisdiction of the member's municipality.

RECOMMENDATION 12

That the disclosure of sources of income be of a general nature.

RECOMMENDATION 13

That "controlled" in clause 8(3)(b) be defined as 50% or more voting shares and that this definition be included in the Municipal Conflict of Interest Act.

RECOMMENDATION 14

That supplementary disclosure statements be filed annually.

RECOMMENDATION 15

Amend clause 8(1)(d) to read "a board of trustees of a police village".

RECOMMENDATION 16

Omit subsection 24(1) and clause 10(6)(b) outlining the Commissioner's right to initiate legal proceedings.

RECOMMENDATION 17

That clause 10(6)(a) which reads in part "shall prepare a report outlining the apparent contraventions, if any, of section 5,6,7 or 8 by the member and submit it to..." be amended to read, "shall prepare a report outlining the findings of fact, and submit it to..."

RECOMMENDATION 18

Amend section 10 to allow an individual to make a preliminary informal application to the Commissioner and to allow the Commissioner an informal option to report.

RECOMMENDATION 19

Amend clause 10(5)(a) to include the protection found in the Freedom of Information and Protection of Privacy Act, 1989 and allow the municipal Commissioner the option to exercise the powers as provided to the provincial Commissioner.

RECOMMENDATION 20

Include a provision in the legislation to allow the Commissioner's use of inadvertence and 'bona fide' as described in the Members' Conflict of Interest Act, 1988.

RECOMMENDATION 21

Amend the word "person" in section 10 of the Act to be defined as "an individual who is a property owner or a resident within the municipality."

RECOMMENDATION 22

That the legislation be amended to require the Commissioner to immediately inform a member if a contravention has been alleged by an individual.

RECOMMENDATION 23

Release the Commissioner's office funding option paper prior to the introduction of the legislation.

RECOMMENDATION 24

That a tribunal consisting of municipal and local board representatives be appointed to receive the Commissioner's report, determine whether a contravention has taken place and impose the appropriate penalties.

RECOMMENDATION 25

That section 15, duty of an advisor, be omitted from the legislation and that all bodies to which the legislation will apply be set out in the "local board" definition.

RECOMMENDATION 26

Amend subsection 16(2) to clearly define the timing of the declaration.

RECOMMENDATION 27

Clearly define the terms "interest" and "information" in subsection 19(1).

RECOMMENDATION 28

Delete subsection 19(2) from the legislation.

RECOMMENDATION 29

Amend subsection 20(1) to appropriately incorporate exceptions extended to Members of the Legislative Assembly and delete subsection 20(2).

RECOMMENDATION 30

Delete references to "advisor" or "former advisor" in section 19 and amend section 21 accordingly.

RECOMMENDATION 31

Omit section 26 of the draft legislation.

RECOMMENDATION 32

Amend the structure of clause 27(1)(c) and incorporate the protection of a member in a case where no legal procedures have taken place.

RECOMMENDATION 33

That the contents of subsection 27(1) be made mandatory rather than permissive.

RECOMMENDATION 34

Amend Form 3, the declaration of elected official, to read as presented above.

RECOMMENDATION 35

Define "local board" in the Municipal Act.

RECOMMENDATION 36

Delete subsection 55.1(2) and consequently subsection 55.1(3).

RECOMMENDATION 37

Amend subsection 55.1(1) to read "every council and local board shall adopt a procedure by-law for governing the calling, place and proceedings of meetings, and the conduct of members."

RECOMMENDATION 38

Delete clauses 55(6)(b) and (d).

RECOMMENDATION 39

Clarify subsection 193(4) to explain when and what kind of appraisal is required.

RECOMMENDATION 40

Provide a consequence provision if a municipality contravenes the requirements set out in subsection 193(4).

RECOMMENDATION 41

That items detailed in clauses 193(5)(b),(c) and (d) be set out in the legislation proper rather than in the regulations.

RECOMMENDATION 42

Delete the alternative of a by-law and mandate the registries for real property in the legislation.

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ACKNOWLEDGMENTS

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